

REMARKS

A. Backgr und

Claims 1-20 were pending. The Office Action rejected claims 1-20 under the judicially created doctrine of double patenting in light of various cited references. Claims 1-3, 16 and 17 were rejected under 35 U.S.C. § 102(b) as being anticipated in view of prior art references. Claims 15, 18-20 were rejected under 35 U.S.C. § 103(a) as being obvious in view of cited prior art references. By this Preliminary Amendment, Applicant has cancelled claims 1-20 and added new claims 21-37. Accordingly, claims 21-37 are presented for the Examiner's consideration in light of the following remarks.

B. Amendments

Amendment to the specification was made to include the requisite related U.S. applications' section detailing the priority date and related applications.

New claims 21-37 include the limitations of the claims as originally filed while adding the additional limitation of lift assist means and/or springs to aid a user in moving the tread base between an operating position and a storage position. Newly added claims 21-37 are supported by the specification and claims as originally filed, specifically page 25, lines 23-30 reference the lift assist means and gas spring.

For the foregoing reasons, Applicant respectfully submits that the new claims do not introduce new matter and enter thereof is respectfully requested.

C. **Rejection on the Merits**

1. **Double Patenting Rejection**

Claims 1-20 were rejected under the judicially created doctrine of double patenting over claims 1-20 of United States Patent No. 5,674,453 issued to Watterson et al. (hereinafter "*Watterson '453*"). Furthermore, claims 4-14 and 15-20 were rejected under the judicially created doctrine of obviousness, type double patenting, as being unpatentable over claims 4-13 and 14-19 of *Watterson '453*.

The above referenced application is the parent for the pending application. In light of the relationship between the pending application and *Watterson '453* and the Examiner's rejections, Applicants are willing to terminally disclaim the term of the present application under 35 U.S.C. § 253 and 37 C.F.R. §§ 1.321 and 3.73 to the term of *Watterson '453*. An appropriate terminal disclaimer will be submitted upon request.

2. **Rejection under 35 U.S.C. § 102(b)**

Claims 1-3, 16, and 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by the HouseFit treadmill (hereinafter "*HouseFit*") as disclosed on page 197 of the 1993 Sports Goods Taiwan Buyer's Guide. In light of the cancellation of claims 1-3, 16 and 17, the foregoing rejection is now moot.

With respect to newly added claims 21-37, Applicant would respectfully point out that *HouseFit* does not teach or suggest the use of a lift assist means or a gas spring to aid in lifting the tread base to an upright structure. Furthermore, *HouseFit* does not disclose a motorized treadmill as claimed in the present invention. Therefore, Applicant respectfully submits that the new claims 21-37 are not anticipated by the *HouseFit* reference.

3. Rejection under 35 U.S.C. § 103(a)

Claims 15 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *HouseFit* in view of *Lynch*. Additionally, claims 18 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *HouseFit* in view of the LC-611f, or LC-611fm, 11-function exercisers disclosed on page 2 of the 1995 of the Sports Goods Taiwan Buyer's Guide (hereinafter "LC-611"). In light of the deletion of claims 15 and 20 and inclusion of new claims 21-42 the above rejections are moot.

With respect to newly added claims 21-37, Applicant respectfully submits that none of the cited references, either alone or in combination, teach or suggest the combination of a folding treadmill with a lift assist means or a gas spring to assist a user in moving the tread base between an operating position and a storage position. Accordingly, claims 21-37 are allowable over the cited prior art.

D. Conclusion

In view of the foregoing, Applicants respectfully request favorable consideration and allowance of the present claims. In the event the Examiner finds any remaining impediment to the prompt allowance of this application which could be clarified by a telephone interview or which is susceptible by being overcome by an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned attorney.

SIGNED on this the 4th day of June, 1999.

Respectfully submitted,


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